

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LUIS CHARBONIER and WANDY CHARBONIER,

Plaintiffs,

-against-

CITY OF NEW YORK, POLICE OFFICER JOHN DOE
1-10,

Defendants.

**ANSWER ON BEHALF OF
CITY OF NEW YORK**

11 CV 4764 (JBW) (RER)

Jury Trial Demanded

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Defendant CITY OF NEW YORK, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the complaint, except admits that plaintiffs purport to bring this action as stated therein.
2. Denies the allegations set forth in paragraph "2" of the complaint, except admits that plaintiffs purport to invoke the Court's jurisdiction as stated therein.
3. Denies the allegations set forth in paragraph "3" of the complaint, except admits that plaintiffs purport to lay venue as stated therein.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "4" of the complaint.
5. Admits the allegations set forth in paragraph "5" of the complaint.
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the complaint as they pertain to unidentified defendants, and further state that the allegations that the individual defendants "were acting

under color of state law” and “in the scope of their duties and functions as officers, agents, servants and employees” with “the power and authority vested in them” are conclusions of law rather than averments of fact, to which no response is required.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the complaint.

8. Denies the allegations set forth in paragraph "8" of the complaint.

9. Denies the allegations set forth in paragraph "9" of the complaint.

10. Denies the allegations set forth in paragraph "10" of the complaint.

11. Denies the allegations set forth in paragraph "11" of the complaint.

12. Denies the allegations set forth in paragraph "12" of the complaint.

13. Denies the allegations set forth in paragraph "13" of the complaint.

14. Denies the allegations set forth in paragraph "14" of the complaint.

15. Denies the allegations set forth in paragraph “15” of the complaint except admit that plaintiffs were transported to the 83rd precinct.

16. Denies the allegations set forth in paragraph "16" of the complaint, except admit that Wandy Charbonier was given a desk appearance ticket.

17. Denies the allegations set forth in paragraph "17" of the complaint.

18. Denies the allegations set forth in paragraph "18" of the complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "19" of the complaint.

20. Denies the allegations set forth in paragraph "20" of the complaint.

21. In response to the allegations set forth in paragraph "21" of the complaint, defendant repeats and re-alleges the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

22. Denies the allegations set forth in paragraph "22" of the complaint.

23. Denies the allegations set forth in paragraph "23" of the complaint.

24. Denies the allegations set forth in paragraph "24" of the complaint.

25. In response to the allegations set forth in paragraph "25" of the complaint, defendant repeats and re-alleges the responses set forth in the preceding paragraphs of this answer as if fully set forth herein.

26. Denies the allegations set forth in paragraph "26" of the complaint.

27. Denies the allegations set forth in paragraph "27" of the complaint.

FIRST AFFIRMATIVE DEFENSE:

28. The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE:

29. Defendant has not violated any rights, privileges, or immunities under the Constitution or laws of the United State or the State of New York or any political subdivision thereof, nor have defendants violated any Act of Congress providing for the protection of civil rights.

THIRD AFFIRMATIVE DEFENSE:

30. Any injury alleged to have been sustained resulted from plaintiffs' own culpable or negligent conduct or that of a third party and was not the proximate result of any act of defendant.

FOURTH AFFIRMATIVE DEFENSE:

31. Plaintiffs may have failed to comply with the conditions precedent to suit.

FIFTH AFFIRMATIVE DEFENSE:

32. There was probable cause for plaintiffs' arrest, detention and prosecution.

SIXTH AFFIRMATIVE DEFENSE:

33. Plaintiffs' claims may be barred by the applicable statute of limitations.

SEVENTH AFFIRMATIVE DEFENSE:

34. At all times relevant to the acts alleged in the complaint, defendant City, its agents and officials, acted reasonably, properly, lawfully and in good faith in the exercise of their discretion. Consequently, defendant City of New York is entitled to governmental immunity.

EIGHTH AFFIRMATIVE DEFENSE:

35. Plaintiffs may have failed, in whole or in part, to comply with New York General Municipal Law § 50(e), §50-h, §50-k and §50-i.

NINTH AFFIRMATIVE DEFENSE:

36. Plaintiffs provoked any incident.

TENTH AFFIRMATIVE DEFENSE:

37. Punitive damages cannot be awarded against the City of New York.

ELEVENTH AFFIRMATIVE DEFENSE:

38. Plaintiffs have failed to mitigate their alleged damages.

WHEREFORE, Defendant CITY OF NEW YORK requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
December 30, 2011

MICHAEL A. CARDOZO

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of the City of New York
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By: _____/s/

Andrew Lucas
Assistant Corporation Counsel
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**ANSWER ON BEHALF OF CITY OF NEW
YORK**

MICHAEL A. CARDOZO

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NYCLIS No. 2011-031159*

Due and timely service is hereby admitted.

New York, N.Y., 2011

..... Esq.

Attorney for